

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE P.O. BOX-100 SOUTH WALPOLE, MA. 02071 PLAINTIFF, Pro se)	C.A. 04-11430-RCL
V.)	AFFIDAVIT OF WILLIAM M. TYREE IN SUPPORT OF HIS MOTION FOR AN ENLARGEMENT OF TIME UP TO <u>AND INCLUDING MAY 21, 2005.</u>
UNITED STATES ARMY CID AGENT PAUL MASON (Retired) CID AGENT JOSEPH BURZENSKI (Retired) DEFENDANTS)	
U.S. Department of Justice John J. Moakley Courthouse 1 Courthouse Way, Suite 9200 Boston, Massachusetts 02210 (Main phone: 617-748-3100) Counsel for Defendants)	

I, William M. Tyree, on oath state:

1. That, I am the named plaintiff in the above entitled action.
2. That, on June 29, 2004, the above court did date and order process occur on the above named defendants.
3. That, I did serve the U.S. Army and the U.S. Army did reply by attached letter dated July 11 2004 from Joseph H. Rouse, Acting Chief, Tort Claims Division, and did acknowledge in passing the receipt of the above cited legal action by stating:
"...While I realize that your claims are in suit..." in which the U.S. army admitted they had seen a copy of the Complaint in this case. Assistant United States Attorney, (AUSA) Michael P. Sady has specifically charged that after the suit was processed that the "agency" involved in this action, to wit, the U.S. Army had no idea of the complaint, and never was served a copy.

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4. That, on **July 13, 2004**, I attempted to effect service on the defendant Joseph Burzenski, pursuant to Rule 4(i)(2)(A)(B)(3) (A)(B), and this defendant refused to accept service, see photocopied envelope attached. Original envelope is on file with the court in this case.
5. That, I have been told that defendant Paul Mason may be dead, but was last known to be out side the United States doing contract work for the United States government, and the AUSA Sady has failed so far as to provide this court and the named plaintiff with a current address for defendant Mason.
6. That, through paragraph(s) 3-5 above, I am able to show that as an incarcerated pro se litigant, I have met the requirements of process service on the three defendants, or **at least tried to meet the burden of service in good faith**.
7. That, on December 13, 2004, the court, Lindsay, J., did order the plaintiff to make fresh service of this action on defendant Burzenski, see attached order. This order is silent on whether or not the plaintiff had to reaffect service on the U.S. Army, and Paul Mason. Summons and Complaints for both the U.S. Army and Paul Mason were subsequently made on the U.S. Attorney pursuant to Rule 4(i)(1)(A). This was done within the 120 days of summons issuing on June 29, 2004.
8. That, despite all of the foregoing attempts to comply with the Federal Rules of Civil Procedure at Rule 4(i), once the court ordered the reservice of defendant Burzenski on December 13,

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2004, in good faith I then turned around and reserved all three of the named defendant's using the U.S. Marshal, and the U.S. Marshal did serve all three defendants between January 28, 2005 and February 9, 2005. Between June 29, 2004 and December 13, 2004, the AUSA Michael P. Sady had sought and attained two enlargements of time and the court had allowed both enlargements. At no time did AUSA Sady raise or offer a Rule 12(b)(5) motion and challenge the service of the Complaint, or Amended Complaint on the defendants. It was not until after December 30, 2004, well after the 120 days that the summons were served that the AUSA Sady stated in writing that he would not respond to any material or motions filed in the above case until I had complied with the order of the court dated December 13, 2004, to reserve defendant Burzenski.

9. That, in all, I have taken the following action so far in this case:

- (a). attempted to serve Burzenski directly and he refused certified U.S. Mail service;
- (b). the U.S. Attorney accepted certified U.S. Mail service for defendant Paul Mason and the U.S. Army: that office did not object to that service and the order of the court dated December 13, 2004, proves that fact. Had the U.S. Attorney objected timely, the court would have named all three defendants instead of just defendant Burzenski in the order of December 13, 2004.

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(c). I served the Commanding General of Fort Benjamin Harrison via certified U.S. Mail (No. 70020510000182006981), with the Complaint, summons, and three subpoena's for U.S. Army Finance Records. The certified package was signed for on July 2, 2004. I need time to access my legal papers in prison storage area to retrieve this certified mail card;

(d). the U.S. Army did on July 11, 2004, as noted above at paragraph-3, did admit that they knew the "...claims were in suit..." by the date of July 11, 2004, which was nine days after the Commanding General at Fort Ben Harrison signed for the certified U.S. Mail service of Compalint, summons and subpoena's;

(e). my records indicate that I also made service directly on the Secretary of the U.S. Army via certified U.S. Mail of the Complaint (i.e., Amended complaint, summons, subpoena's), etc., and that package was signed for on September 7, 2004. I need to locate the mail card as my records were recently upset and thrown out by prison staff during a cell search. The enlargement of time will allow me to find the mail card since AUSA Sady has decided to argue insufficient service;

(f). my records indicate that the Office of the U.S. Attorney-^{*}Attorney General received certified U.S. Mail service of the Complaint as well. The cell search destroyed pages indicating when that office signed for the material

*CERTIFIED MAIL TO A.G. ASHCROFT ^{JOHN D.} #70020510000182023322

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described. The enlargement of time would allow for a search of the mail card in question. Although the contents of this affidavit pursuant to Rule 4(1) "Proof of Service" only requires that I file an affidavit attesting to service which I have done in this affidavit. Further, failure to make proof of service does not affect the validity of service and the court upon presentation of a good faith effort to comply with the requirement of Rule 4, may allow service to be amended. I have engaged in numerous forms of service on all three of the named defendants; the three named defendants have been represented by counsel for at least seven months; during the seven month period that the defendants have had counsel their counsel, AUSA Sady was served twice with the Complaint, (i.e., Amended Complaint, summons, and subpoena's). The first service was by certified U.S. Mail and the second service was via the Office of the U.S. Marshal in Boston, Massachusetts.

10. That, I therefore request a 30 day enlargement of time until May 21, 2005, to locate and serve the court with the mail cards and documents cited herein. Signed under the pains and penalties of perjury on this date, April 17, 2005.



William M. Tyree
Pro se
P.O. Box-100
S. Walpole, MA. 02071



DEPARTMENT OF THE ARMY
U.S. ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
4411 LLEWELLYN AVENUE
FORT GEORGE G. MEADE, MARYLAND 20755-5360



JUL 1 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eastern U.S. Torts Branch
04-C01-T071/T072

Mr. William M. Tyree
Post Office Box 100
South Walpole, Massachusetts 02071-0100

Dear Mr. Tyree:

This notice constitutes final administrative action on your claims against the United States in the amount of \$25,000,000 each for alleged illegal actions on the part of the U.S. Army in connection with your arrest in February 1979.

Your claims are denied. Since you have filed suit against the United States in the United States District Court for the Eastern District of Massachusetts, your claims are no longer amenable to administrative resolution.

While I realize that your claims are in suit, I am nevertheless required by regulation to inform you that if you are dissatisfied with the action taken on your claims, you may file suit in an appropriate United States District Court no later than six months from the date of mailing of this letter. By law, failure to comply with that time limit forever bars you from further suit. I am not implying that any such suit, if filed, would be successful.

Sincerely,

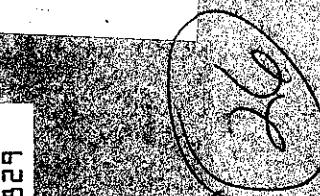
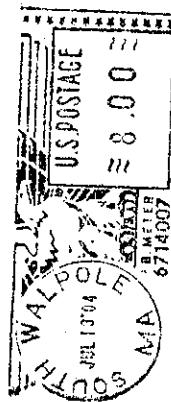
Joseph H. Rouse
Acting Chief, Tort Claims
Division

*-PROOF OF SERVICE ON THE
U.S. ARMY DEFENDANT*

OF THE RETURN ADDRESS FOLLOWS ON THIS LINE

CERTIFIED MAIL™

7003 0500 0004 5797 6829



FROM: Bill Tyree
Pro se
P.O. Box-100
S. Walpole, MA. 02071

TO: Joseph Burzenski, USA Retired
138 Country Lane
Leominster, MA. 01453

Certified U.S. Mail

UNITED STATES POSTAL SERVICE™
www.usps.gov

LABEL107R OCT 1997

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Joseph Burzenski
138 Country Lane
Leominster, MA. 01453

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X
 Agent
 Addressee
B. Received by (*Printed Name*)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: **XX**No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (*Extra Fee*) Yes

7003 0500 0004 5797 6829

THIS CORRESPONDENCE IS FORWARDED
FROM A MASSACHUSETTS CORRECTIONAL
INSTITUTION. THE CONTENTS MAY NOT HAVE
BEEN EVALUATED AND THE DEPARTMENT OF
CORRECTIONS IS NOT RESPONSIBLE FOR THE
SUBSTANCE OR CONTENT OF THE
ENCLOSED MATERIAL.

[Handwritten signature]

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

Sender: Please print your name, address, and ZIP+4 in this box.

Bill Tyree

P.O. Box-100

S. Walpole, MA. 02071

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

U.S. Dept. of Justice
John J. Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, Massachusetts
02210

Attn: Michael J. Sullivan

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? Yes
If YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

2. Article Number

(Transfer from service label)

7003 0500 0004 5798 4671

PS-Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$ 3.95
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

7003 0500 0004 5798 4671
U.S. Dept. of Justice
Street Address:
of Post Office
City, State, ZIP+4
Boston, MA. 02210

SENDER: COMPLETE THIS SECTION

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Paul Mason/Dept. of Justice
 John J. Moakley Courthouse
 1 Courthouse Way, Suite 9200
 Boston, Massachusetts
 02210

A. Signature

 Agent
 Addressee

B. Received by (Printed Name)

C. Date of Deliver

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

2. Article Number

(Transfer from service label)

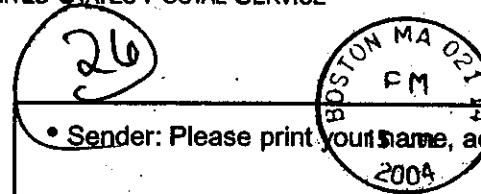
7003 0500 0004 5797 6812

PS Form 3811, August 2001

Domestic Return Receipt

102695-02-M-10

UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

26
Bill Tyree

P.O. Box-100

S. Walpole, MA 02071

6812
 U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.**OFFICIAL USE**

Postage	\$ 3.95
Certified Fee	230
Return Receipt Fee (Endorsement Required)	175
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To
Paul Mason/Dept. of Justice
 Street, Apt. No.
 1 Courthouse Way, Suite 9200
 City, State, ZIP+4
Boston, MA. 02210

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was received from Lindsay, Reginald entered on 12/13/2004 at 5:48 PM EST and filed on 12/13/2004

Case Name: Tyree v. United States Army et al

Case Number: 1:04-cv-11430

Filer:

Document Number:

Docket Text:

Judge Reginald C. Lindsay : electronic ORDER entered denying [2] Plaintiff's MOTION for the United States Marshal to Make Service on the Defendant CID Agent Joseph Burzenski, U.S. Army, (Retired), or in the Alternative, Order that Service of the Summons and Related Amended Complaint May be Made on the U.S. Attorney for the State of Massachusetts. To the extent that this is a motion seeking to have the Marshal's Service serve the complaint without fee, the motion is denied because the plaintiff is not proceeding in forma pauperis. The plaintiff may contact the Marshal's Service directly, pay the required fee, and have service made, or the plaintiff may seek leave to have a constable serve the papers. The court denies [6] Plaintiff's MOTION to File Two Sided Copies of Pleadings with the United States District Court in this case. Such filings may impede the scanning of the plaintiff's filings. The court denies without prejudice [7] Plaintiff's MOTION for the United States District Court Magistrate Judge to Adopt the Plaintiff's Proposed Finding of Fact and Conclusion of Law in the Plaintiff's Amended Complaint Supported by Exhibits 1-7, and Supplemental Pleadings. This motion is premature. The court denies [8] Plaintiff's MOTION to Effect Service of Amended Complaint with Exhibits 1-7 in Support and Supplemental Pleadings Served on United States District Court by Mailing Same to the Named Defendants VIA Certified U.S. Mail Return Receipt Requested. Service must be made in accordance with the Federal Rules of Civil Procedure and the court's Local Rules. (Lindsay, Reginald)

The following document(s) are associated with this transaction:

1:04-cv-11430 Notice will be electronically mailed to:

Michael P. Sady michael.sady@usdoj.gov, ellen.souris@usdoj.gov

1:04-cv-11430 Notice will not be electronically mailed to:

William M. Tyree
MCI Walpole
P.O. Box 100
South Walpole, MA 02071

COMMONWEALTH OF MASSACHUSETTS**DEPARTMENT OF CORRECTION****INMATE GRIEVANCE FORM****FORWARD TO INSTITUTIONAL GRIEVANCE COORDINATOR (IGC)**

Name	TYREE WILLIAM	Grievance#	8095	Institution	MCI CEDAR JUNCTION
Commit No.	W37519	Housing	A 3	Date Of Incident	20050119
Complaint	There are no "local rules" of the US District Court for Mass, in the law library. I'm in both courts and cannot litigate my claims due to the lack of these local rules in the law library. I'm being beaten to death by opposing counsel who automatically expect me to know and use these rules.				
Remedy Requested	Immediately provide the local rules for the US Court of Appeals and US District Court of Massachusetts.				
Staff Recipient	Aucoin Ann Marie CO I				
Staff Involved					
Signature					

RECEIPT BY INSTITUTIONAL GRIEVANCE COORDINATOR

Date Received	20050121	Decision Date	20050125
Signature	Barrett Patrick M CO I		
Final Decision	DENIED		
Decision	The Local rules for the US District Court and US Appeals Court of Massachusetts are not required or mandated reference materials in the MCI Cedar Junction law collection.		
Signature	<i>Barrett</i>	Date	<i>1/25/05</i>

Denied grievances may be appealed to the Superintendent within 10 working days of Institution Grievance Coordinator's decision.

INMATE RECEIPT

Name	TYREE WILLIAM	Institution	MCI CEDAR JUNCTION
Commit No.	W37519	Grievance#	8095
Signature	Aucoin Ann Marie CO I		
Date Received	20050121		

**U.S. Department of Justice
United States Marshals Service**

PROCESS RECEIPT AND RETURN

*See Instructions for "Service of Process by the U.S. Marshal"
on the reverse of this form.*

PLAINTIFF

WILLIAM M. TYREE

COURT CASE NUMBER

04-11430-RCL

DEFENDANT

U.S. ARMY [REDACTED]

TYPE OF PROCESS

AMENDED COMPLAINT

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

U.S. ARMY [REDACTED]

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

AT OFFICE OF U.S. ATTORNEY; AUSA MICHAEL P. SADY, ESQUIRE,
9200 JOHN J. MOAKLEY COURTHOUSE, BOSTON, MA. 02210

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

WILLIAM M. TYREE

PRO SE

P.O. BOX-100
S. WAKEFIELD, MA. 02071

Number of process to be served with this Form - 285

1

Number of parties to be served in this case

1

Check for service on U.S.A.

✓

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):
Fold

INITIAL SERVICE ON US ARMY ALREADY MADE -
U.S. D.C. ORDERED RESERVICE DUE TO TWO SIDED COPIES MADE ON DEFENDANT. NUMBER OF PROCESS IS ONLY ONE FOR THAT REASON. (ORDER ENCLOSED)

Signature of Attorney or other Originator requesting service on behalf of:

William M. Tyree

PLAINTIFF
 DEFENDANT

TELEPHONE NUMBER
None

DATE
1/21/05

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated.
(Sign only first USM 285 if more than one USM 285 is submitted)

Total Process
1

District of Origin
No. 35

District to Serve
No. 38

Signature of Authorized USMS Deputy or Clerk
A. L. G. [Signature]

Date
1/21/05

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

ILONA TERKARA - RECEPTIONIST

Address (complete only if different than shown above)

A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service
1/28/05 10:00 am
Time
pm

Signature of U.S. Marshal or Deputy
J. Gaul

Service Fee 45.00	Total Mileage Charges (including endeavors) _____	Forwarding Fee -0-	Total Charges 45.00	Advance Deposits 45.00	Amount owed to U.S. Marshal or -0-	Amount of Refund -0-

REMARKS:

NOTE

U.S. GOVERNMENT
United States Marshals Service

PLAINTIFF

WILLIAM M. TIGHE

DEFENDANT

ADDRESS (Street, City, State, Zip)

P.O. BOX 570, WATERTOWN, NY 13601

AT

SEND NOTICE OF SERVICE BY:

 MAIL TELETYPE TELEPHONE PERSONAL DELIVERY

SPECIAL INSTRUCTIONS FOR SERVICE

Telephone Numbers and Estimated Travel Time
Fold

Date Notice Issued: 4/27/05Date Notice Served: 4/27/05 (Initials of Person Serving)

SPECIAL INSTRUCTIONS FOR SERVICE

J

SPACE BELOW FOR LISTING OF VARIOUS OFFICES AND LOCATIONS

Informed:

number known

estimated time

travel time

and the date

 Other offices or locations where service may be madeName and title of individual served (if known): WILLIAM M. TIGHE1700 State St., 1100 (Rec'd 4/27/05)

Address (complete only if different than above)

1700 State St., 1100City, State, Zip Code: Watertown, NY 1360113601Telephone Number: (315) 785-2222(315) 785-2222Fax Number: (315) 785-2222(315) 785-2222Email Address: WMTIGHE@WATERTOWN.NY.USPS.COMWMTIGHE@WATERTOWN.NY.USPS.COMOther: NoneNone

REMARKS

AB